VINCENT PANIKULANGARA

v.

V.R. KRISHNA IYER

HIGH COURT, KERALA
P SUBRAMONIAN POTI ACTING CJ
KS PARIPOORNAN J
[O.P. NO. 8228 OF 82-S (CONTEMPT)]
12 APRIL 1983

CONTEMPT OF COURT: *Controversial speech by Judge - Criticisms on judicial system - Whether guilty of contempt - Whether there was a case to issue notice to show cause.*

Criticisms or comment upon Courts, Judges or the judicial system coming from a person, whose *bona fides* in the cause of judiciary is not open to doubt, cannot be termed as *mala fide* or dishonest.

Case referred to:
Vincent and Ors. v. Gopala Kurup [1982] KLT 151

JUDGMENT

P Subramonian Poti Acting CJ:

Quite often a Judge comes across a case which has no precedent. But rarely has a case as unique as the one before us arisen in any Court.

Sri V.R. Krishna Iyer, formerly a Judge of this Court, later a Judge of the Supreme Court was one of the distinguished guests at the Silver Jubilee Celebrations of the Court held in October-November 1981. At a symposium organised on that occasion on "Approach to Judicial Reforms", Sri Krishna Iyer as a main speaker addressed the assembled audience. One of the Judges of this Court Sri G. Viswanatha Iyer was then in the chair. Sri Vincent Panikulangara, the petitioner is said to have attended that symposium and according to him the speech delivered by Sri V.R. Krishna Iyer amounted to scandalization of the authority of the Supreme Court and the High Courts and therefore Sri V.R. Krishna Iyer is guilty of criminal contempt. He moved the Advocate General for sanction which the Advocate General gave.

The offending passages, according to the petitioner, are those stated in para. 8 of the petition. We will extract that paragraph here:

> 8. The speech of the respondent contained among other things the following expressions against the functioning of the judiciary:
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> (a) One day the people of this country will rise and say that we don't want this magnificent red stone edifice on the Curzon Road because it is seen to be counter productive and in turn the High Courts.
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> (b) When property rights are affected in R.C. Kooper's case the Judge's heart began to bleed.
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> (c) The whole question is whether the Judiciary live down its partiality towards the propertariat and cultivate an affection for the proletariat.
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> (d) And in this country the Jesuses are getting crucified and the Barbases are very much upheld, thanks perhaps to the judiciary.
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> (e) That they (judiciary) have not been ordinarily influenced by the executive or the legislature.

(f) In fact as an insider there are many things I know which I should not mention in public.

(g) Our whole judicial approach has a certain independence from all civilised behaviour.

(h) In fact to speak very frankly, the Indian judiciary is *non est.*

To understand the real import of any statement it is necessary to understand the context in which it is made. Evidently Sri V.R. Krishna Iyer seems to have made his speech extempore.

We do not have the benefit of appreciating the setting in which the impugned statements were made by Sri Krishna Iyer. We are only pointing out that had there been a report of the whole speech it would have been easier to understand and assess fairly the objective as well as impact of the impugned statements.

Is Sri V.R. Krishna Iyer guilty of contempt? Is there a case to issue notice to him to show cause?

Before we consider the question whether there is a case for issue of notice to Sri V.R. Krishna Iyer let us advert to the problem referred to as unique by us in the opening paragraph of this Judgment. Any Judge who knows a party in a case does not sit to try the case. If such a case comes up posted before him he avoids the case. The matter is reported to the Chief Justice for posting before another Bench. No occasion had arisen when there was a case in this Court which none of the Judges of this Court could hear for the reason the party in the case was known to all the Judges. Sri V.R. Krishna Iyer being formerly a Judge of this Court, is well known personally to all the Judges, most of whom, if not all, are his good friends. Even after Sri Krishna Iyer left the Court he has been keeping in touch with the Court, naturally because this is his home State and perhaps also because he was the most mobile Judge in India. He is reported to be keeping as busy, if not more as before even after his retirement. If personal acquaintance or friendship with a party disqualified a Judge from hearing the case, then the posting of the case before a Bench of this Court is a problem. This explains the delay in posting this case for admission. Though filed in October, 1982 it has come up for admission only in March 1983 and that due to the insistence of the petitioner to whom the position was explained so that if he so chose, he may move for transfer of the case to another High Court, if that is possible. The petitioner, who is the General Secretary of the Public Interest Law Service Society and is also an Advocate submitted that he has no objection to any Bench of this Court hearing the matter. When the case was posted before us we again explained the position to Counsel. The option was only to put off the hearing of the case *sine die.* Learned Counsel Sri Vincent Panikulangara submitted that no personal interest was involved and since he too was only as much interested in espousing a cause as the Court there would be no objection to this Court and this Bench hearing the case. In fact he prayed that this may be done. We heard the learned Advocate General. He also expressed the same view.

In the peculiar situation arising in this case where the High Court can only put off posting the case if it is not to hear it and in view of the unequivocal views expressed by the petitioner and the Advocate General that we do hear the case we have heard the matter. We have agreed to that course since Sri Vincent Panikulangara told us, and we agree, that what is really involved is an academic exercise, an exercise intended to define the contours of permissible criticism. The rule that no Judge shall hear the case in which he is likely to be biased is a rule well established, a rule which can bear no exception. Bias is more than likely to arise by reason of acquaintance with a party to the action. Even if Judges, by their judicial training and maturity are able to deal with cases objectively, to the common man whose confidence in the judicial process should not be permitted to be eroded, it may appear

that the ultimate judgment in any such case was influenced by matters extraneous to the facts of the case. Hence larger interests, that of retaining confidence in the judicial system should dissuade this Court from taking up the case. But faced with an unparallelled situation, when there is no other alternative, we have posted the case.

We have been at pains to indicate that the nature of the exercise called for in the case the nature of the interest of the petitioner, the unique circumstances of the case which have been referred to and finally the consent of all concerned that this Court may hear the matter was really it is an academic exercise that is involved has persuaded us to adopt a course which we normally would not have adopted in any case. We believe that our approach will not be understood as laying down a precedent, recognising an exception to the rule that a Judge should not hear the case of a party known to him. The case before us is really not one of an exception, but the application of a unique but new rule, the adoption of which is justified because of the equally unique circumstances of the case.

An erudite Judge illumines the pages of law reports. He earns the respect and admiration of the members of the Bar and the Bench. The legal fraternity may remember him as his reputation survives to posterity. But rarely is such a Judge widely known outside the world of law. Erudition coupled with a honest missionary zeal in the cause of social uplift gives a different image to a Judge and makes him live not only in the book of law but also in the hearts of men. Sri V.R. Krishna Iyer is known and respected by the public of this country. His tenure of office as a Judge of this Court, later as a member of the Law Commission and finally as a Judge of the Supreme Court has been marked by a distinction that singles him out from the rest of his colleagues. His decisions evince a new approach to law and new role for the Judge. Many a good Judge has come and gone having performed his duty with dedication and integrity, as good Judges are expected to do, leaving a mark of his own and an imprint of his individuality but giving no room for anyone to raise his eyebrows at him at any time on account of infringement of traditional behaviour and infringing *status quo* decorum. While leaving a distinct mark of his personality in all that he did Sri V.R. Krishna Iyer did challenge established traditional values and approaches and opened new vistas of thought and action to promote the social engineering process in this country. We do not propose to say more lest it may appear that called upon to assess the objectionable element, if any, in Sri V.R. Krishna Iyer's speech we have been overawed by the importance, if not greatness of the man and consequently there has been some distortion in our decision making process. We have mentioned about him here, in brief, referring only to absolute essentials, as his speech cannot be adjudged without the background of the man, his possible interest in making the statements and of how people are likely to react to such statements.

Contempt may be committed by a person by wilfully disobeying the order of process of Court or wilfully committing breach of undertaking given to a Court. Mere disobedience or breach, as the case may be, will not be sufficient to find contempt. Wilfulness will have to be found on the facts and circumstances. Once that is found the Court must take serious notice of the contemner's conduct. The order, even erroneous it be, calls for compliance and there can then be no excuse. The contempt in such a case will be civil contempt.

Criminal contempt operates when the act of the alleged contemner prejudices or interferes or tends to interfere with, the due course of any judicial proceedings. Such conduct will have to be viewed severely particularly because of its tendency to affect the ultimate decision in the case. A case is to be tried in Court and not outside it. Sometimes comments or statements are made inadvertently and without the knowledge of pending proceedings in Court or without intention to effect the result of such proceedings, but even so technically the contemner's conduct would be objectionable, but the circumstances may persuade a Court

to view such conduct lightly. But not so where, a party, aware of a pending case and aware of the consequences of his statement, deliberately makes his comments. The circumstances in that event would aggravate the offence. If such comments are from responsible persons or those placed in authority it is likely that the harm is greater and aggravation would also be of a much higher degree.

The comments with which we are concerned in this case do not fall within either of the categories adverted to above. It is said to fall within objectionable criticism of Courts. Criticism or comment upon Courts, Judges or the judicial system may amount to scandalising the Court or may tend to scandalise the Court and that would be objectionable. Lowering of the authority of the Court or tending to lower the authority of the Court would also fall within this category. This class of contempt stands on a different footing and therefore Courts, called upon to consider any alleged case of such contempt will have to make a different approach. That is because criticism of Courts, within permissible limits, should not be taken to lower the authority of the Courts or to scandalise them. In a democratic age no institution should be beyond the reach of honest criticism. The Courts are no exception. While commenting on the functioning of Courts, on the working of the judicial machinery, adverse and unpalatable criticism is as likely as offer of bouquets for the excellence of its performance. The Courts should not feel elated by compliments offered or be embarrassed by adverse criticisms. Of course all criticisms cannot be said to be honest or genuine. The context and setting in which such criticism is made, the person who makes it, and the persons to whom it is addressed should, in a large measure, indicate the apparent purpose or subject of the criticism, whether it was made with genuine academic interest or whether it is made for any extraneous purpose.

The principle thus stated can be illustrated by instances. Take a case where one of the sitting Judge of this Court is invited to deliver a keynote address at an important seminar on 'Courts' Delays and Arrears in Courts'. He would be able to make a positive contribution only by a thorough and objective study of the problem and its proper presentation. He may have to comment on the effectiveness of the Courts as they function today and the dangers that the judicial system in this country may have to face if urgent attention is not immediately paid to the Courts' problems. An honest exposition is called for and that may necessitate disclosures as to what extent the Courts have lost credibility so far. The message has to be conveyed effectively and forcefully and in that process could the Judge be said to have scandalised the Courts or tended to lower their authority? A Judge called upon to lead a discussion at a symposium on "the high cost of litigation and the plight of the poor litigant" may have occasion to deal harshly with the absence of legal aid legislation, or legal aid schemes of sufficient reach. That, despite the provision in the directive principles in Article 39A of the Constitution, the poor man's cause suffers vitally may be a comment upon the existing system of dispensation of justice, but in a symposium seriously got up this matter ought to find forceful expression so that, appropriate legal aid schemes may be drawn up. We need not multiply illustrations or examples. Suffice to say that as we pointed out earlier, who, why, where, in regard to the impugned statements would be of material relevance.

There is an ocean of difference between well-informed and ill-informed criticism. Those who have spent years and perhaps a lifetime as part of an institution or to study an institution may have occasion to make a thorough objective assessment of that institution. What they say in regard to a matter concerning that institution should be viewed differently from a similar statement by an uninformed person. In one case there is objectivity and in the other there is none. Absence of objectivity must necessarily reflect upon the *bona fides* of the criticism.

It will be useful to refer to the views expressed by the Judges of the Court of Appeal in England in the famous case *R. v. Commissioner of Police of the Metropolis, ex-parte Blackburn (No. 2)* [1968] 2 All ER 319. The Court was considering the plea of contempt in relation to an article by Mr. Quintin Hogg in 'Punch' critically commenting on a judgment of the Court of Appeal. Lord Denning MR said in that case thus:

> It is a jurisdiction which undoubtedly belongs to us but which we will most sparingly exercise; more particularly as we ourselves have an interest in the matter.
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> Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself. It is the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a Court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy, we must rely on our conduct itself to be itself to be its own vindication.
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> Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right, nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.

The following observations of Salmon LJ in the same case may now be read:

> The authority and reputation of our courts are not so frail that their judgments need to be shielded from criticism, even from the criticism of Mr. Quintin Hogg. Their judgments, which can, I think, safely be left to take care of themselves, are often of considerable public importance. It is the inalienable right of everyone to comment fairly upon any matter of public importance. This right is one of the pillars of individual liberty freedom of speech which our Courts have always unfailingly upheld.
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> It follows that no criticism of a judgment, however vigorous, can amount to contempt of Court, provided it keeps within the limits of reasonable courtesy and good faith. The criticism here complained of however rumbastious, however wide off the mark, whether expressed in good taste or in bad taste, seems to me to be well within those limits.

Edmund Davies LJ in the same case said:

> Doubtless it is desirable that critics should, first, be accurate and, secondly, be fair, and that they will particularly remember and be alive to that desirability if those they would attack have in the ordinary course, no means of defending themselves.

A Division Bench of this Court had occasion to consider the contours of contempt in a case of criticism of the Courts in *Vincent and Ors. v. Gopala Kurup* [1982] KLT 151. This Court said in that case thus:

> In a democracy fair criticism of the working of all the organs of the State should be welcome and would in fact promote the interests of democratic functioning. Section 5 of the Act, evidently enacted with a view to secure this right, provides that a person shall not be guilty of contempt of Court for publishing any fair comment on the merits of any case which has been heard and finally decided. This does not mean that the right to commit for any contempt by scandalising the Court has become obsolete. The question would still be whether the publication alleged to be offending is by way of fair comment on the merits of the case. Comment not made honestly and in good faith would not be fair comment. Comment not intended to promote public interest could not be fair comment.

When accuracy of the law laid down by them in their decisions should be the object of fearless scrutiny. Such freedom to criticise is essential if the high quality of judicial administration is to be maintained. (Freedom, the Individual and the Law by Harry Street at p. 167-168).

If reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat as contempt of Court. (AIR 1936 P.C./ 141).

Speaking of the English Law of contempt of Court Prof. Harold LJ Laski in "Studies in Law and Politics" quoted the views of Justice Holmes that the boundaries to the expression of opinion ought only to be set by the imminent danger of public disorder. We will quote the passage here:

> It is unnecessary here generally to argue the case for a wide freedom to criticise in a democratic state. Its corollary is the clear inference, insisted upon by Mr. Justice Holmes in a classic opinion, that the boundaries to the expression of opinion ought only to be set by the imminent danger of public disorder. Against such a canon the present English procedure seriously offends.
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> While the privilege of Parliament would leave its members free to speak strongly upon matters concerning the judiciary all other persons who, even from the highest motives, may choose to criticize the Courts, find the scales heavily weighted against them. For, as has been argued, there is an inevitable corporate interest in the judiciary which makes it difficult for them to act independently and impartially in cases of this kind. (At p. 234) Courts should not be over sensitive to criticism. The jurisdiction in contempt is not to be invoked unless the case is clear and beyond reasonable doubt. Even so a criticism which imputes improper and dishonest motives has necessarily to be regarded seriously.

Now we will come to the controversial speech by Justice V.R. Krishna Iyer. The symposium on "Approach to Judicial Reforms" was organised for an academic discussion on a topic of current interest particularly to the members of the Bar and the Bench. The symposium was held in the High Court premises. It was attended particularly by those who are concerned with the Courts and the judiciary. On the occasion Sri. V.R. Krishna Iyer, as a main speaker invited to speak on the subject, was expected to make an academic exercise on the subject. Sri Krishna Iyer had, apart from his learning a wealth of experience which evidently qualified him to speak authoritatively on the subject. His contribution as a Judge, as a member of the Law Commission and as a powerful proponent of the cause of judicial reforms is well known. It is in this back-ground that the statements made by him in his speech should be understood. By pointing out the weak spots in the judicial system and alerting the people to the need for a change lest the people as a whole reject the system, Justice Iyer was alerting his audience to bestow serious attention to the problem. The comments made by him are not of a person who is vituperative or who wants to bring into disrepute the judicial system of this country, but of one who was exhorting the people for revolutionary change in the outlook concerning problems of the judiciary. Judged in the perspective of what has been explained earlier we see no reason to consider his criticism, coming as it does from a person whose *bona fides* in the cause of judiciary is not open to doubt, as *mala fide* or dishonest.

In the circumstances we find no reason to issue notice on his motion. We see no reason to call upon Sri. V.R. Krishna Iyer to answer any charge of contempt. The petition is closed.

Also found at [1983] 2 CLJ 285